HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No.5608 OF 1998

PETITIONERS

1. K.M. Rathi,
   S/o Shri Maniklalji Rathi,
   Aged about 65 years,
   Proprietor, Raj Talkies,
   Raipur (M.P.)
   r/o Buty Plot,
   Amravati (M.S.)
2. Raj Talkies,
   Raipur
   Through : its Manager R.T. Joshi,
   S/o Shri Tajmal Joshi,
   Aged 50 years,
   Raipur (M.P.)

Vs.

RESPONDENTS

1. State of Madhya Pradesh,
   Through : Secretary,
   Separate Revenue Department,
   Bhopal
2. Commissioner
   Excise,
   Motimahal,
   Gwalior (M.P.)
3. District Excise Officer,
   Raipur (M.P.)

Present : Shri Ashish Shrivastava, learned counsel for the petitioners
Shri Yashwant Singh, learned G.A. for the State.

ORAL ORDER

(Passed on 22nd June 2006)

A short question that arises for decision is whether the District Excise Officer, third respondent herein, Raipur having allowed an application filed by the petitioners to avail of the facility under Clause (d) of Section 4(2) of M.P. Entertainment Duty and Advertisement Tax Act, 1936 (for short 'the Act') was justified in restricting the facility for the period commencing from 07-11-1998 to 31-3-1999 only during the financial year1998-99. This case has had a checkered history. Initially, the application made by the petitioner on 27-05-98 under the aforementioned provision of the Act was rejected by the District Excise

Officer, third respondent herein, on 29-06-1998 on the ground that the petitioner ought to have made the application at the beginning of the financial year 1998-99 and not in the course of the said financial year. The correctness of that opinion of the third respondent was assailed before the High Court of M.P. in W.P. No. 2854 of 1998. The M.P. High Court allowed the said writ petition on 05-10-1998 and set aside the order of the Excise Commissioner, the second respondent herein, and remanded the proceedings directing that the application of the petitioners should be dealt with in accordance with law.

(2) After the remand of the proceedings, it appears that the application of the petitioner was considered by the Excise Commissioner and by his order dated 05-11-1998 allowed the application of the petitioners, but, he restricted the facility to pay the tax under Clause (d) of Section 4(2) of the Act to the period commencing from 07-11-1998 to 31-03-1999. A copy of the said order is marked as Annexure P/5. The said order was communicated by the third respondent to the petitioners as per Annexure P/6.

(3) I have heard learned counsel for the parties. It was contended by the petitioners that since the petitioners made the application for the facility of paying the tax by the mode as envisaged under the Clause (d) for the entire financial year 1998-99, that facility ought to have been granted by the second respondent from 01-04-1998 to 31-03-1999 and there was absolutely no justification for the second respondent to restrict the facility in terms of Clause (d) only for the period commencing from 07-11-1998 to 31-03-1999. Learned Govt. Advocate, *per contra*, would support the impugned order.

(4) Having heard learned counsel for the parties, I am of the considered opinion that the order of the second respondent in restrictive the facility of paying the tax in terms of Clause (d) only for the period from 07-11-1998 to 31-03-1999, in the facts and circumstances of the case, is totally unjustified and arbitrary. Clause (d) of Section 4(2) of the Act undeniably provides for granting facility for each financial year. In the application made by the petitioner, admittedly, he sought the facility to pay tax in terms of the Clause (d) for the entire period of 1998-99 financial year, that is to say, from 01-04-1998 to 31-03-1999. Simply because due to wrong action on the part of the third respondent in rejecting the application of the petitioners and that led to avoidable litigations, that circumstance cannot be put against the petitioners to deny them the facility of paying the tax in terms of Clause (d) procedure. The impugned action of the third respondent, therefore, cannot be sustained under Article 14 postulates. The writ petition is, therefore, allowed a direction shall issue to the respondents to extend the facility of paying entertainment tax in terms of Clause (d) of Section 4(2) of the Act to the petitioners for a period commencing from 01-04-1998 to 31-03-1999. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice